Cri Appeal 872/96 (2)

P.R.-9-94

APPEAL OF PRISONER

Division Bench (Criminal)

1456/53 Name कोदू लाल

ner's name बज रंगी

sidence मुं० पकरिया. थाo-गोरेला Age 50 year

ntenced to जिला बिलासपुर [म.प्र.] on 15-4-96

आज-म-कारावास

Under Section 302 भा०दं०वि० by 5th A.D.J. Bilaspur [M.P.]

It is explained to the prisoner that if he states he wishes to be represented by a legal practitioner the appellate Court will not proceed with the case for seven days unless the legal practitioner appears earlier. If the legal practitioner does not appear within seven days he may not heard at all if the Prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to my legal practitioner who should appear.

1 Date of Application for copy of Judgement _____

2 Date on which copy received 15-4-96

3 Date on which Appeal sent No. 108 Octagon/96 Date- 21-4-96

4 Whether the prisoner wishes to be represented or not. yeas

No 1456/53 Name कोदू लाल

Confined in first class Dist Jail Bilaspur

No. 108 Dated 21-4-1996

Forwarded to the रजिस्ट्रार उच्च-न्यायालय मध्यप्रदेश जबलपुर [म.प्र.]

to gether with a copy of judgement or order passed in the case for favour of transmission to the proper Appellate court.

Superintendent
उपाधीक्षक
Jail
जिला जेल बिलासपुर

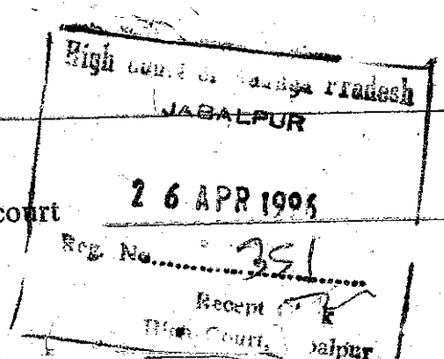
Date of receipt in _____ Office _____

Date of receipt of record to accompany the with intimation

Memo of Appeal to the Appellate court _____

No _____ Dated _____ 199 _____

Forwarded to the _____



Date of receipt in Appellate court _____

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: -

HON'BLE MR. L.C. BHADOO AND
HON'BLE MR. V.K. SHRIVASTAVA, JJ.

21-12-2005

Miss Sangeeta Mishra, counsel for the appellant.

Mr. Ashish Shukla, Public Prosecutor with Mr. Alok Bakshi, Govt. Advocate for the State/respondent.

Oral judgment.

By this appeal through the Superintendent, Central Jail, Bilaspur, accused Kodu Kol has questioned the legality of the judgment of conviction and sentence dated 15th April, 1996, passed by the 5th Additional Sessions Judge, Bilaspur, in Sessions Trial No.407/95, whereby learned Additional Sessions Judge after holding the accused/ appellant guilty for the commission of offence under Sections 302 & 201 of the I.P.C. sentenced him to undergo imprisonment for life and R.I. for two years, respectively. It was also directed that both the sentences shall run concurrently.

The case of the prosecution, in brief, is that accused Kodu along with his wife Phoolkunwar Bai was residing in Village: Pakariya, Gayadin Kol, maternal father-in-law of the accused, was also residing with the accused in his house. Gayadin Kol started committing rape on Phoolkunwar Bai after threatening her. Some how accused Kodu came to

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know about the said relations of his wife and maternal father-in-law Gayadin. Therefore, on 29-6-1995 accused served liquor to Gayadin and when Gayadin was sleeping after consuming liquor, the accused attacked Gayadin with a Tabbal on his neck, as a result of which the neck was cut and Gayadin died. Thereafter, accused Kodu burried the body of Gayadin in a pit in the Jhorki drain, which was behind the house of the accused. When Village Sarpanch Budhiya Bai, Kotwar Nanhelal and other persons came to know about missing of Gayadin, they enquired from the accused on 5-7-1995 about the whereabouts of Gayadin. On enquiry by Sarpanch Budhiya Bai, Kotwar Nanhelal and other villagers, the accused made extra judicial confession before them that he has burried the body of Gayadin in the Jhorki drain after committing his murder. Nanhelal (PW-6) lodged the report in the Police Station: Gaurela on 5-7-1995.

On receiving the report, Station House Officer Rajeshwar Singh registered the F.I.R. under Sections 302 & 201 of the I.P.C. and recovered Dhoti & Tabbal stained with blood from the accused. He also took into possession the bow and two arrows from the accused. Even the clothes of the deceased were also removed and taken into possession. Accused Kodu gave memorandum while in the police custody regarding Tabbal and the dead body, based on the memorandum, the body of Gayadin was exhumed from the Jhorki drain and the Tabbal was

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also taken into possession. Panchnama of the body was prepared, thereafter, the body of Gayadin was sent for post-mortem examination to the Primary Health Centre, Gaurela. Dr. R.C. Mishra (PW-7) conducted post-mortem on the body of Gayadin on 6-7-1995 and he prepared the post-mortem report Ex.P-12. The body of Gayadin was in the advanced stage of putrefaction and smell was emanating from the body. The left hand was missing, skin muscle and subcutaneous tissues were missing from the right hand, there was a cut injury on the thyroid cartilage in the size of 18 x 4.5 x 4.5 cms., wind pipe, food pipe & neuromuscular bundle were also found cut, maggots were present in the wounds, cervical vertebra Nos.C1 & C-2 were transversely cut, and there was a cut injury in the size of 13 x 4.5 x 4.5 cms. on left supra-quacalar area, injury was oblique in direction. In the opinion of the doctor, the injuries were ante-mortem in nature and were caused 5-10 days before the date of post-mortem. The cause of death was excessive bleeding and syncope, same was homicidal in nature. The recovered articles were sent to the Forensic Science Laboratory, Sagar and as per the Laboratory's report, blood was found on Tabbal & Dhoti of the accused, and on the clothes of the deceased namely, pant, underwear, baniyan.

After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate, First Class, Pendra Road, who in turn

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committed the case to the Sessions Judge, Bilaspur, from where, learned 5th Additional Sessions Judge received the case for trial.

The prosecution in order to establish charge against the accused examined nine witnesses. On the other hand, statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied, the prosecution evidence and pleaded innocence. Learned Additional Sessions Judge after hearing the arguments of Additional Public Prosecutor and counsel for the accused convicted and sentenced the accused as mentioned in para 1 of this judgment.

We have heard Miss Sangeeta Mishra, learned counsel for the appellant and Mr. Ashish Shukla, learned Public Prosecutor with Mr. Alok Bakshi, learned Govt. Advocate for the State/respondent.

As far as the nature of death of Gayadin as homicidal in nature is concerned, learned counsel for the appellant argued that the body was in a putrefied condition, therefore, it was not possible for the doctor to give opinion about the cause of death.

In this connection, if we look into the evidence of Dr. R.C. Mishra (PW-7), who conducted post-mortem on the body of Gayadin, he has stated that the body was in the advanced stage of putrefaction and smell was emanating from the body. He has further stated that there was (a) an incised wound in the size of 18 x 4.5 x 4.5 cms. on the neck below the thyroid cartilage, wind pipe & food pipe were cut, both the

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side neuromuscular bundles were cut, maggots were present in the injury; (b) cervical vertebra C1 & C2 were found cut transversely; (c) an incised wound in the size of 13 x 4.5 x 4.5 cms. on left supra-cevicular area. On internal examination, it was found that all the neuromuscular bundles of the neck were cut, wind pipe, food pipe and thyroid glands were cut, C1, C2 & C3 vertebra were found fractured. In para 9 of his evidence, the doctor has stated that the cause of death was syncope as a result of excessive bleeding and the nature of death was homicidal. His report is Ex.P-12.

In view of the above evidence of the doctor, who conducted post-mortem, we do not find any substance in the argument advanced by learned counsel for the appellant.

As far as the involvement of the accused in committing the murder of Gayadin is concerned, Miss Sangeeta Mishra, learned counsel for the appellant argued that the F.I.R. was lodged with the delay of nine days. She further argued that the body which was exhumed was not in identifiable condition. Even in the evidence of the doctor, it has come that there were no marks on the body to ascertain whether the body was of Gayadin and that nobody saw the accused attacking the deceased.

On the other hand, Mr. Alok Bakshi, learned Govt. Advocate supported the judgment of the trial Court.

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It is true that there is no direct evidence in this case, witnessing the crime. The case rests on the circumstantial evidence. As per the settled principles laid down by the Hon'ble Apex Court in the matter of **Nesar Ahmed vs. State of Bihar** reported in **AIR 2001 Supreme Court 2416** that in a case based on circumstantial evidence, before the Court can record conviction, it must satisfy itself that circumstances from which an inference of guilt could be drawn have been established by unimpeachable evidence led by the prosecution and that all the circumstances put together are not only of a conclusive nature but also complete the chain so fully as to unerringly point to the guilt of accused and are not capable of any explanation which is not consistent with the hypothesis of the guilt of the accused.

Now, we shall proceed to examine the circumstantial evidence adduced by the prosecution to connect the accused with the murder of Gayadin. As far as the first point raised by learned counsel for the appellant that the body was not in identifiable condition i.e. that the body was that of Gayadin, in this connection, the accused/appellant made extra judicial confession before Budhiya Bai (PW-1), Budhlal (PW-5) & Nanhelal (PW-6). Deceased Gayadin being maternal father-in-law of the accused was residing with the accused. As per the evidence of Budhiya Bai (PW-1), in the night of 4th July, 1995, Gopal came to her house and informed that the accused has murdered Gayadin. On hearing

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this she called Village Kotwar Nanhelal (PW-6) and in the next day morning along with Kotwar Nanhelal and other persons she went to the house of Kodu, they saw that the pit was filled with fresh sand near the house of the accused on which flies were making buzzing sound, at that time, Kodu was not at his residence. Thereafter Kodu came to her house and enquired from her as to why they went to his residence and thereafter, her husband Budhlal (PW-5) enquired from Kodu about Gayadin, then the accused disclosed to them that Gayadin was having illicit relations with his wife Chandrakali, which he could not tolerate, therefore, he has murdered Gayadin with the axe. The accused also informed that after committing the murder of Gayadin, his body has been burried. This evidence has been corroborated by Budhlal (PW-5) who is none else than the husband of Budhiya Bai (PW-1). Nanhelal Kotwar (PW-6) has also corroborated the above evidence.

As per the evidence of Rajeshwar Singh (PW-9), on 6-7-1995 Kodu gave memorandum, based on that, the body of Gayadin was exhumed and Panchnama to that effect Ex.P-11 was prepared. On the scene of occurrence, Assistant Surgeon from Pandra Road was called under Ex.P-16, thereafter under Ex.P-17, the doctor of Primary Health Centre, Gaurela was requested to conduct the post-mortem. Dr. R.C. Mishra (PW-7) conducted the post-mortem. He has stated in his evidence that the body was identified by Budhlal & Gopal Ahir.

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Therefore, from the above evidence it is established that the accused made extra judicial confession before Budhiya Bai (PW-1), Budhlal (PW-5) & Nanhelal (PW-6) regarding committing the murder of Gayadin on account of the fact that Gayadin was having illicit relations with his wife and thereafter, the body was exhumed at the instance of the accused. When the body of Gayadin was exhumed, clothes were present on the body, therefore, the body was identified with the help of clothes also, which is evident from Ex.P-11 Panchnama of the body. In view of the above evidence, it is established that the body of which post-mortem was conducted by Dr. R.C. Mishra (PW-7) was that of Gayadin.

As far as the delay in lodging the report is concerned, as Gayadin was residing with the accused and the accused attacked Gayadin when he was sleeping after consuming liquor, thereafter, he burried the body, as there was nobody to witness the crime and the crime came to the light only when Gayadin was found missing from the residence of the accused and on enquiry by the Sarpanch (PW-1), the accused made extra judicial confession before her, thereafter, the report was lodged on 5-7-1995. As per the settled law, delay in lodging the report becomes fatal only when the delay is caused in order to cook-up a case and for false implication of any person in the crime. But, in the present case, as has been mentioned above, the delay has occasioned only on account of the fact that the crime was committed in such a way that nobody

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witnessed the crime. Therefore, the delay in lodging the report cannot be termed to be fatal in this case.

Learned counsel for the accused/appellant further argued that as the extra judicial confession was made before the Sarpanch and the Kotwar, therefore, the extra judicial confession made before them is not admissible in evidence. In this connection, Section 24 of the Indian Evidence Act, 1872, envisages that

> "A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him."

The Sarpanch of a village and the Kotwar cannot be considered to be persons in authority. Moreover, there is no allegation in this case that accused Kodu made extra judicial confession on account of any inducement, threat or promise.

From the evidence of Budhiya Bai (PW-1), Sarpanch of Village: Pakariya, when one Gopal informed her about the murder of Gayadin,

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being Sarpanch of the village, she went to the house of the accused where she saw signs of newly dug sand, on that day, the accused was not at his residence, and when he came back to her house, her husband enquired from the accused about Gayadin, his maternal father-in-law. At that time, the accused disclosed that as Gayadin was having illicit relations with his wife that is why he has murdered him with the axe. Same has been corroborated by Budhlal (PW-5) and Nanhelal Kotwar (PW-6). There is nothing in their evidence, which shows that the accused was coerced or induced or that the accused was threatened to make the extra judicial confession. Therefore, the extra judicial confession made by the accused before these three witnesses was voluntary and same was true because, thereafter at the instance of the accused, the body of Gayadin was exhumed from a place which was disclosed by the accused.

Even the weapon of offence Tabbal was also recovered at the instance of the accused, which has been proved by Rajeshwar Singh (PW-9), the Investigating Officer who has stated that on 5-7-1995, the accused gave memorandum Ex.P-5 and in pursuance of that he got recovered the iron Tabbal and one piece of Dhoti stained with blood, same was taken into possession under Ex.P-6. Nanhelal (PW-6) has also proved Ex.P-6. In para 7 of his evidence, Rajeshwar Singh (PW-9) has stated that at the instance of accused Kodu, one sharp edged Tabbal

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and one piece of Dhoti were recovered under Ex.P-6. These articles were sent to the F.S.L. for examination and as per the report of F.S.L., Sagar, Tabbal, the weapon of offence and the piece of Dhoti of the accused were found stained with blood. Therefore, in view of the above circumstances proved by the prosecution viz., that the accused made extra judicial confession before Budhiya Bai (PW-1), Budhlal (PW-5) & Nanhelal (PW-6), the other circumstances that the body of deceased Gayadin was exhumed at the instance of the accused from the place near the house of the accused, the weapon of offence and the piece of Dhoti of the accused were also recovered at the instance of the accused, same were sent for chemical examination, and as per the F.S.L. report Ex.P-22, same were found stained with blood.

Considering the above evidence, we are of the considered opinion that the prosecution has been able to prove the offence against the accused/appellant regarding his involvement in committing the murder of Gayadin, and the chain of circumstances are so complete that point only towards the involvement of the accused as the author of the crime.

In view of the above discussion, we are of the opinion that the finding of the trial Court convicting the accused for the commission of offence under Section 302 of the I.P.C. is based on legal and clinching evidence, which does not require any interference, by this Court.

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As far as the offence under Section 201 of the I.P.C. is concerned, as per the evidence discussed in the earlier part of this judgment, the accused after committing the murder of Gayadin burried his body in the Jhorki drain which was situated behind the house of the accused, thereby he caused disappearance of the evidence of murder case with the intention to screen himself from legal punishment. Therefore, the accused has rightly been convicted for the commission of offence under Section 201 of the I.P.C. also.

In the result, we do not find any substance in this appeal, same being devoid of merit liable to be dismissed and it is accordingly dismissed.

Sd/-
Vijay Kumar Shrivastava
Judge

Sd/-
L.C.BHADOO
Judge

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